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2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

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4 DONALD LITTLE and TERRENCE JOHNSON,
5 Individually and on behalf of all others
6 similarly situated,

5

PLAINTIFFS,

6

-against-

Case No:
15-CV-07423

7

8 CARLO LIZZA & SONS PAVING, INC., SHIPS
9 POINT INDUSTRIES LTD., A&B CONTRACTORS LLC
and ELIA ALY LIZZA, jointly and severally,

10

DEFENDANTS.

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DATE: August 26, 2016

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TIME: 11:00 A.M.

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16

DEPOSITION of the Defendants,

17

CARLO LIZZA & SONS PAVING, INC. and SHIPS

18

POINT INDUSTRIES LTD, by a Witness, ALY

19

NICHOLAS LIZZA, taken by the Plaintiffs,

20

pursuant to a Notice and to the Federal

21

Rules of Civil Procedure, held at the

22

offices of Pelton & Graham, PC, 111

23

Broadway, New York, New York 10006, before

24

Risa Karr, a Notary Public of the State of

25

New York.

1 A. LIZZA

2 If you don't understand a question, please
3 let me know and I will rephrase it.

4 Sometimes I ask bad questions.

5 A. Okay.

6 Q. Your attorney may object to one
7 of my questions. Unless he tells you not
8 to answer it, he is preserving his
9 objection on the record, but you can go
10 ahead and answer the question.

11 If you don't understand
12 anything, please let me know. And if you
13 need a break, please let me know, you can
14 take a break. I ask that you answer any
15 question that's been asked of you before we
16 go on break.

17 Is there any reason why the
18 testimony you are going to give today would
19 not be accurate?

20 A. No, I don't see why not.

21 Q. What type of work do you do?

22 A. I do heavy road construction.

23 Q. For who?

24 A. For Carlo Lizza & Sons.

25 Q. What is your job position with

1 A. LIZZA

2 Carlo Lizza & Sons?

3 A. I'm a project manager.

4 Q. Can you tell me a little more
5 about the company Carlo Lizza & Sons?

6 A. Yeah, sure. We are in the
7 heavy road business. Mainly in recent
8 years we have done a lot of milling in New
9 York City. That's the majority of what we
10 do now. We used to do a lot of work in
11 Long Island, but the market has changed
12 over the years and around the time I was
13 about 24 or 25 when I started to get really
14 involved and I bid my first city milling
15 job and ever since then I have been in the
16 city.

17 Q. You were 24 or 25 when you bid
18 a city milling project?

19 A. Yeah.

20 Q. When was that?

21 A. I believe it was 2011 and the
22 work was to be done in 2012, I believe was
23 when we first started working in the city.

24 Q. What is the ownership structure
25 of Carlo Lizza?

1 A. LIZZA

2 A. My father Elia Lizza, E-L-I-A,
3 Elia Lizza he is the sole owner of the
4 company.

5 Q. Do you have any siblings who
6 also work with the company?

7 A. I have a brother that around
8 the same time, around 2011, left the
9 company that he was working for that my
10 cousins and my uncle work all together and
11 came back to work with my father and I.

12 Q. From 2011 to the present, does
13 Carlo Lizza consistently have revenues of
14 at least 500,000 per year?

15 A. Yes.

16 Q. What is the management
17 structure of Carlo Lizza?

18 A. My father comes in once a week
19 and does payroll. He deals with the bank,
20 deals with the bonding company, deals with
21 upper management, which would be myself. I
22 handle all New York City, anything in the
23 boroughs. And my brother, Keith, handles
24 all of Long Island.

25 Then underneath us you would

1 A. LIZZA

2 the city we assumed it was the same. And
3 only later did we find out that it was not
4 the case.

5 Q. What does that mean?

6 A. In Long Island there is a
7 prevailing wage and a schedule for
8 flaggers. In the city there is no such
9 job. They have something similar called a
10 crossing guard that stays outside of the
11 construction area and they direct foot
12 traffic that the street is closed and
13 vehicular traffic, that they are not
14 allowed to come down the street.

15 Q. You were saying that the
16 crossing guard directs foot and vehicular
17 traffic?

18 A. Yes.

19 Q. When did you first learn that
20 there was a distinction between the
21 flaggers in Long Island versus the city?

22 A. I would say beginning of our
23 second year. Once I started to look at the
24 bid a little closer, the second time I
25 started looking at a bid and I started to

1 A. LIZZA

2 look at the wage scheduling and there just
3 was no -- nothing in there and we asked
4 around what other contractors do and we
5 heard that they had been paying the same
6 people we had been paying a combined rate
7 of almost \$70 an hour 20 or \$30 an hour and
8 we said how could this be.

9 We found out through, you know,
10 just people in the business that in the
11 city there are no flaggers. The closest
12 thing to a flagger, I guess you could say
13 would be a crossing guard, but they are not
14 the same, though. So we had made the
15 mistake of paying them as if they were.

16 Q. What rates were you paying?

17 A. The laborer's rate.

18 Q. Did you speak with an attorney
19 to get the attorney's advice as to the
20 payment rate?

21 MR. ZISKIN: Objection. You
22 can't ask about attorney/client
23 privilege.

24 Q. Did you speak with an attorney
25 regarding the wage rates to be paid to the

1 A. LIZZA

2 crossing guard/flaggers?

3 MR. ZISKIN: That would be a
4 yes or no question. Do not elaborate
5 on what your conversation was.

6 A. No, I didn't.

7 Q. You spoke with others in the
8 industry?

9 A. Yes.

10 Q. How many flaggers are required
11 on any one job?

12 MR. ZISKIN: Objection to form.

13 A. Zero.

14 Q. How many crossing guards are
15 required on one job in the city?

16 A. Wherever you have the limits of
17 the job. Wherever the construction site
18 ends, where a car or a person would come in
19 either from the sidewalk or -- well, no,
20 not the sidewalk, from a street.

21 Wherever vehicular traffic
22 would try to travel the limits of the job
23 outside of the job.

24 Q. The Long Island work, did you
25 have any crossing guards or flaggers that

1 A. LIZZA

2 Q. Yes, that's very dangerous and
3 all too common.

4 A. Yes.

5 Q. Initially you had all the
6 crossing guards on the Carlo Lizza payroll?

7 A. Yes.

8 Q. Then after working with Kevin
9 Quick or meeting with Kevin Quick, the
10 crossing guards were transferred over to
11 the A&B?

12 A. No, Kevin Quick I always dealt
13 with, but when I realized that this
14 crossing guard -- there was no prevailing
15 wage governing the crossing guards, they
16 could be paid minimum wage. There was no
17 need for Carlo Lizza to have them on our
18 payroll any longer. So we didn't insist on
19 it.

20 Q. At that point they were able to
21 be transferred to A&B?

22 A. He was able to do business as I
23 guess he had been doing before we had A&B
24 on our payroll.

25 Q. Who oversaw the crossing guards

1 A. LIZZA

2 Reporter.)

3 Q. I handed you Exhibit P-3 which
4 depicts a milling machine on East, I
5 believe, 80th Street in the city.

6 Do you recognize this milling
7 machine?

8 A. Yes, I do.

9 Q. Is that one of your milling
10 machines?

11 A. I recognize this very well.
12 This was a special job we did for the city.
13 We did First Avenue from 72nd Street to
14 125th. This was a federally-funded job and
15 as such all the flagmen and the crossing
16 guards were paid the prevailing wage for
17 the laborers for the duration of this job
18 which was three weeks.

19 Q. The job lasted three weeks?

20 A. In 2013. This was a special
21 job. This was concrete milling.

22 Q. How many hours per week was
23 worked on this job?

24 A. This job, I tell you the truth,
25 I think we did six or seven hours of

1 A. LIZZA

2 picture --

3 A. On a road where width is big
4 enough to permit buses and traffic of that
5 nature through, the stop and go paddles
6 were introduced to keep buses running. So
7 we would space barrels big enough so if
8 they wanted to they could step aside for
9 the MTA buses to go through.

10 So the stop and go paddle was
11 to stop the vehicular traffic and the go
12 was for when a bus would come.

13 Q. Would the road be shut off to
14 other traffic?

15 A. Yes.

16 Q. So only the buses would get
17 through?

18 A. Buses or like a garbage truck,
19 city stuff.

20 Taking a better look he may
21 have a stop and go paddle in his hand, I
22 just can't see because it is a bad picture.
23 I don't think so because it is a weird
24 spot.

25 Q. Would the crossing guard or

1 A. LIZZA

2 coming on to the job site and to keep
3 vehicles from coming on to the roadway, on
4 to the job site.

5 So they would stand at the
6 perimeter of the job outside the job site
7 and direct foot traffic to come this way,
8 ma'am, come this way, sir. And they would
9 use their hands and direct them, no, you
10 cannot come down this street, there's work
11 going on here. Later on they had stop and
12 go paddles and they would just lean them up
13 against the barrels and it was actually a
14 problem. They refused to use them.

15 One time a fellow slashed a
16 woman in the face. You could see on A&B
17 insurance, a woman got cut because they
18 would just throw the paddles on the side
19 and we would get written up for standing
20 with them sometimes.

21 Q. Were barrels ever placed at the
22 front of the street and crossing guards
23 would then be behind the barrels at the
24 crosswalk?

25 A. No. We have to put the barrels

1 A. LIZZA

2 behind people. You can't walk on the job.
3 The whole point of them being there is to
4 keep people from walking on the job. The
5 second someone walks on the job I'm getting
6 sued, they are tripping, falling, getting
7 hurt being hit by equipment.

8 Q. Had you ever seen a crossing
9 guard operating at a corner within the
10 construction site?

11 A. No. What do you mean? Like if
12 we were doing all four roads, if I was
13 doing this road and this road, they would
14 be here?

15 Q. Correct.

16 A. No. Why would they be there?

17 Q. To direct pedestrians.

18 A. No, we put caution tape up and
19 down the streets to try and keep them from
20 coming.

21 Q. On Plaintiffs' Exhibit 1 you
22 drew an X on the right side of the page
23 just above the Plaintiffs' Exhibit sticker.
24 Isn't that crossing guard in traffic?

25 A. Like I said, I'm not the

1 A. LIZZA

2 greatest artist. Push that back ten feet,
3 draw a crosswalk and put him over there.

4 Q. Would the crossing guard ever
5 be behind the barrels but still at the
6 front of the street?

7 A. No, the barrels are there so
8 people see that that is where the
9 construction zone is. Also I got to be
10 able to work in here, so it is to keep
11 people out.

12 If they had the barrels out
13 back in the construction zone, how am I
14 going to get to that? How am I going to do
15 work in that area?

16 They have to be outside of the
17 construction zone.

18 Q. Do pedestrians ever cross
19 behind the barrels but at the front of the
20 street?

21 A. They try to but we put type 3
22 barricades that say sidewalk closed and we
23 put yellow caution tape all around. So
24 when they get here they have no choice but
25 to walk on the outside of the barrels and

1 A. LIZZA

2 encounter someone such as Mr. Little.

3 Q. When they walk outside of the
4 barrels, are they essentially walking in
5 traffic?

6 A. In some cases it is pretty
7 close. They are not in traffic, but it
8 could get pretty narrow depending on the
9 street. That's why we have these guys
10 there to protect them. And if it is a
11 dangerous intersection like that, they are
12 there to slow the traffic down, make sure
13 these people -- say, hey, this is a
14 dangerous area, be aware. You are crossing
15 close to a construction site.

16 Q. You have never seen the
17 pedestrians cross behind the barrels?

18 A. No. I have seen them come out
19 of bars drunk in the morning and run
20 through my caution tape like it was the
21 Olympics, but we frown on that. We try and
22 prevent that. I can't say it never
23 happened in six years. People, we're not
24 going to physically restrain them. I'm
25 sure Mr. Little or whoever was there would

1 A. LIZZA

2 shout at them and say, hey, guys.

3 Q. Did you ever see Mr. Little or
4 any crossing guard walk with machines to
5 make sure people did not come into contact
6 with the machines?

7 A. Not the crossing guard, no.

8 Q. Did you see any crossing guards
9 steering or directing traffic through
10 detours?

11 A. No.

12 Q. Did you see crossing guards
13 open the barrels and direct trucks and
14 equipment into the construction zone?

15 A. I mean they might have touched
16 the barrels, but they were never directed
17 to do so and it was never necessary for
18 them to do so.

19 Q. Did you ever see a crossing
20 guard sweep or shovel the crosswalk area?

21 A. No.

22 Q. Did you ever see a crossing
23 guard use a blower on the sidewalk?

24 A. No, those are the laborers'
25 responsibilities.

1 A. LIZZA

2 A. Yes.

3 MR. PELTON: Mark this as
4 Plaintiffs' 14.

5 (Whereupon, the aforementioned
6 cover page of a milling contract was
7 marked as Plaintiffs' Exhibit 14 for
8 identification as of this date by the
9 Reporter.)

10 Q. I'm handing you what has been
11 marked Plaintiffs' 14.

12 Can you take a minute to review
13 the document and let me know if you can
14 identify the document?

15 A. Yes. This is the cover page of
16 one of the milling contracts we bid.

17 Q. Are the flagmen listed as a
18 classification of workers?

19 A. No.

20 Q. When you first paid them back
21 in 2012, 2013, did you pay them under the
22 laborer highway and paving section?

23 A. I didn't do payroll, but
24 whatever we thought wages were, whatever
25 the prevailing rate in Long Island we

1 A. LIZZA

2 thought comparable to that was we paid.

3 Q. Do you pay flag people doing
4 the type of work Donald Little does out on
5 Long Island?

6 A. They don't do the exact same
7 thing in Long Island. They are in the
8 middle of the street and they are mainly
9 directing active traffic, stopping and
10 going, letting cars stop and go. They
11 direct construction, they can also labor.
12 It's a more -- there's no difference
13 between them and a laborer, basically.

14 So you don't have that many
15 dedicated flagmen, where in the city it is
16 every day that's all they do. In Long
17 Island you won't find one person in 1298
18 that's just a flagmen. That's a position
19 they are put in for that day or for that,
20 you know, job and then the next day they'll
21 be shoveling or raking, they'll be doing
22 something else.

23 Q. When the milling machine comes
24 to the end of the block and when it raises
25 its grinder, does that leave a pile of

1 A. LIZZA

2 estimate was wrong.

3 MR. PELTON: Mark this
4 Plaintiffs' 16.

5 (Whereupon, the aforementioned
6 bid for Queens was marked as
7 Plaintiffs' Exhibit 16 for
8 identification as of this date by the
9 Reporter.)

10 Q. I'm handing you what's been
11 marked Plaintiffs' 16.

12 Can you review this document
13 and let me know if you can identify the
14 document?

15 A. This is another bid that same
16 year for Queens and they forced you to bid
17 \$75 an hour on the flagman.

18 Q. Did you speak with the City of
19 New York as to why they forced you to bid
20 \$75 per hour for the flag person?

21 A. No, I was actually happy that
22 they did that because it is an equal
23 handicap.

24 Q. What do you mean by that?

25 A. It means I don't have to worry

1 A. LIZZA

2 A. No.

3 Q. Did you ever tell Mr. Little if
4 he left the job site before the job was
5 done he would be fired?

6 A. No.

7 Q. Did you ever say that to any of
8 the flag people?

9 A. No.

10 Q. Did you instruct Mr. Little to
11 walk with the machines in trucks from one
12 street to the next?

13 A. No.

14 Q. Did any flag people walk with
15 machines from one street to the next?

16 A. No.

17 Q. Were there daily inspection
18 reports performed for the Department of
19 Transportation on each of these jobs?

20 A. I'm not sure. What do you
21 mean? The DOT is the client, DDC runs the
22 jobs. So DOT -- I don't know what that is.

23 Q. Did the DDC have an inspector
24 on the job?

25 A. Yes, some of them.